SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/19/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-092240

FILED: _____

DAVID RATTINER, et al.

ANDREW M HULL

v.

SAMUEL MATAELE, et al.

FRANKLIN K GIBSON

FINANCIAL SERVICES-CCC
REMAND DESK-SE
SOUTH MESA-GILBERT JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on December 21, 2001, when Appellants' Reply Memorandum was filed. This Court has considered the stipulated record of the proceedings from the South Mesa/Gilbert Justice Court, the exhibits made of record and the memoranda of counsel.[1]

[1] Due to the poor transcription of the lower court proceedings which was submitted as the stipulated record pursuant to Rule 11(b), Superior Court Rules of Appellate Procedure-Civil, the Court attempted to listen to the tape of the proceedings. However, the tape submitted by the lower court only captures what the transcriptionist labeled as Tape 1A. What the transcriptionist labeled as Tape 2A and Tape 3A are not captured on the tape submitted by the lower court, so that portion of the testimony and argument was not available for independent review.

This is an appeal from a Forcible Detainer Judgment entered on September 20, 2001, in favor of Plaintiffs/Appellees. Appellants filed a timely Notice of Appeal in this matter.

On August 27, 2001, Plaintiffs/Appellees caused a 10-Day Non-Compliance Notice to be served upon Appellants pursuant to A.R.S. Section 33-1368(A).[2] Said notice provided, in pertinent part, as follows:

> … Please be advised that pursuant to Arizona Revised Statues, Sec. 33-1368(A) your rental Agreement for the above described premises shall terminate ten (10) days from the date of your receipt, as defined by law, of this notice if you have not completely and permanently remedied the following defaults within ten (10)days:
>
> DEBRIS AND TRASH MUST BE REMOVED FROM SIDE YARDS, REMOVE UNAUTHORIZED PET, YARDS MUST BE MAINTAINED, POOL MUST BE CLEANED AND CHECHEMICALLY [sic] MAINTAINED, YOU MUST PAY PAST DUE CHARGES OF $610.00.

A.R.S. Section 33-1368(A) provides that the written notice to the tenant must specify "the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten (10) days after receipt if the notice of the breach is not remedied in ten (10) days." It is axiomatic that the scope of the notice defines and delineates what must be remedied by the tenant within ten (10) days so as to avoid termination of the lease agreement.

Where no fact findings were requested of the trial court, the reviewing court must assume that the trial court resolved

[2] Plaintiff's Trial Exhibit B.

every issue of fact in a way that supports the judgment.[3] The reviewing court must affirm the trial court if there is any theory of the case upon which the judgment can be sustained and if there is any reasonable evidence in the record supporting such theory.[4] Accordingly, each of the five alleged defaults specified in the A.R.S. Section 33-1368(A) notice must be reviewed so as to determine if any supports the judgment.

With respect to the past due late charges of $610.00, the evidence below was uncontroverted. Appellants owed said amount[5] pursuant to the Residential Rental Agreement executed by Appellants on October 12, 2000.[6] When the facts are uncontroverted, the reviewing court may determine the legal effect of those facts. It is free to substitute its analysis of the record for the trial court's where the issue turns upon the interpretation to be applied to undisputed facts or to legal instruments.[7] Interpretation of a statute involves the resolution of legal, rather than factual issues and the review is *de novo.*[8]

As noted, the 10-day Non-Compliance Notice was given to Appellants on August 27, 2001. Thus, they had through September 6, 2001 to remedy the default of non-payment of the past due late charges of $610.00. The 10-Day Non-Compliance Notice did not involve the September rent since it was not yet due as of August 27, 2001, the date of the notice.

It is uncontroverted that Appellants tendered a cashier's check in the amount of $1,350.00 to Stewart Title and Trust, as Escrow Agent, that Appellants were given a receipt for said

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[3] *Crye v. Edwards*, 178 Ariz. 327, 328, 873 P.2d 665 (App. 1993).
[4] *Trimble Cattle Co. v. Henry & Horne*, 122 Ariz. 44, 46, 592 P.2d 1311 (App.1979).
[5] Plaintiff's trial Exhibit C.
[6] Plaintiff's trial Exhibit A, lines 34-35.
[7] *Fountain Hills Civic Ass'n, Inc. v. City of Scottsdale*, 152 Ariz. 569, 575, 733 P.2d 1152 (App. 1986).
[8] *Chaffin v. Commissioner of Arizona Dept. of Real Estate*, 164 Ariz. 474, 476, 793 P.2d 1141 (App. 1990).

payment, and that the cashier's check was subsequently returned to them at the direction of Appellees. The lease provides that the "[l]andlord is not required to accept a partial payment of rent or other charges. A.R.S. Section 13-1371(A)"[9] The lease further provides that "[a] late charge of $10.00 a day shall be collectible as additional rent."[10] Appellees argue that the "monthly rental payment of $1,350.00 … was legally rejected by the Plaintiffs."[11] Appellees are correct. The total "rent" due and owing as of September 1, 2001, was $1,960.00: $1,350.00 as and for September's rental payment plus $610.00 as and for unpaid late fees which are deemed additional rent. Thus, Appellees were within their rights to reject the tendered payment.

Two specified defaults were the existence of debris and trash in the side yards and the failure to maintain the yard. A.R.S. Section 33-1368(A) requires that any act or omission constituting the alleged breach must constitute a "material non-compliance by the tenant with the rental agreement." The Complaint so characterizes them.[12] The lease agreement provides:

> …Tenant shall maintain the premises in a neat and undamaged condition and, in particular, shall …maintain the premises in a clean and safe condition, dispose of all ashes, rubbish, garbage and other waste in a clean and safe manner …and generally conduct themselves and others in their charge …in a manner so as not to … in any way deface, damage, impair or otherwise destroy any part of the premises.[13]

[9] Plaintiff's trial Exhibit A, line 33.
[10] See Fn.6, supra.
[11] Plaintiffs/Appellees' Opening [Answering] Memorandum at page 4, lines 18-19.
[12] Special Detainer Complaint dated September 7, 2001.
[13] Plaintiff's trial Exhibit A, lines 76-81.

Appellees are correct that the standard of review, applicable when, as I see here, the sufficiency of the evidence to support a judgment is questioned on appeal, mandates an examination of the record only to determine whether substantial evidence exists to support the action of the trial court.[14] The record below contains substantial evidence to support the judgment of the trial court on the basis of these latter two specified defaults.[15]

IT IS THEREFORE ORDERED affirming the judgment of the South Mesa/Gilbert Justice Court dated September 20, 2001.

IT IS FURTHER ORDERED remanding this matter back to the South Mesa/Gilbert Justice Court for all further and future proceedings, with the exception of attorneys fees and costs on appeal.

IT IS FURTHER ORDERED that the Clerk of this Court or the Clerk of the South Mesa/Gilbert Justice Court, shall release all monies held as monthly payments of rent and/or bond to Appellees.

IT IS FURTHER ORDERED that counsel for Appellee's submit an application and affidavit for attorneys fees by March 22, 2002, with copies to counsel for Appellant.

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[14] *Hutchepson v. City of Phoenix*, 192 Ariz. 51, 53, 961 P.2d 449 (1998); *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185 (1989); *State ex.rel. Herman v. Schaffer*, 110 Ariz. 91, 96, 515 P.2d 593 (1973).

[15] While this Court may well have not concluded that the condition of the premises as depicted in the photographs of the side yard and the lawn, see Defendant's trial Exhibit 1, constitute a breach of the tenant's obligations under the lease, nor constitute a material non-compliance, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact. *State v. Guerra,* supra; *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed. 2d 409 (1984); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).